



CITY OF SAN JOSE, CALIFORNIA

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SAN JOSÉ ELECTIONS COMMISSION

Thomas Mertens, Chair
Jang Badhesha
Michael Smith
Tony Ventura

SAN JOSÉ ELECTIONS COMMISSION MEETING MINUTES September 5, 2007

I CALL TO ORDER

The Members of the San José Elections Commission convened at 5:35 p.m. in Room W-242 of City Hall, 200 E. Santa Clara Street, San José, CA 95113.

PRESENT: COMMISSIONERS Badhesha, Smith and Mertens

ABSENT: COMMISSIONERS de Funiak and Ventura

STAFF PRESENT: Chief Deputy City Attorney Norm Sato
Senior Deputy City Attorney Lisa Herrick
City Clerk Lee Price

II REPORT OF THE CHAIR

There was none.

III DISCUSSION ITEMS

A.1 Review and consider response to Request for Qualifications (RFQs) for an Investigator

a. Rivera and Associates

Documents Filed: 1) Request for Qualifications from Rivera and Associates dated July 31, 2007

The Commission interviewed Roberto Rivera and Commissioner Smith questioned him about the complaint letter submitted by Robert Stang. Chair Mertens requested that he be copied on the invoices for the Investigator and Evaluator to see their fiduciary obligation. Mr. Rivera expressed some concern regarding lack of cooperation with campaign treasurers, suggested that it may be more timely to work directly with the City Attorney's Office, and noted that he was restrained by the contract

amount. Discussion ensued on the Investigator's ability to access information during an investigation. Chair Mertens commented that if the Commission wants to be proactive, the Investigator should have access to reviewing records (including checks) of campaign donations. He also expressed disappointment about the fact that the Investigator and Evaluator did not know about the San Francisco Elections Commission Complaint against the respondent in the Hileman Complaint. He added that the Commission needs to know what resources the Investigator needs and suggested that following a hearing, any information the Investigator received be shared with the Commission for evaluation purposes. Mr. Rivera suggested that a facilitated meeting be set to help sort out the roles of all parties. Chair Mertens agreed to contact the Evaluator before the next meeting to discuss the work relationship between the Investigator and the Evaluator.

A.2 Selection of an Investigator

Motion: Upon motion by Commissioner Badhesha, seconded by Commissioner Smith, and unanimously passed, the Commission authorized the City Clerk to authorize a continuation agreement for \$5,000 to carry the Commission through the next few weeks. Final decision on the Investigator will be made at the next meeting (October 10, 2007).
Vote: 3-0-2

E. Discussion of the Elections Commission hearing on Hileman complaint against Pacific Park Management and possibility of referral to the District Attorney

Chief Deputy City Attorney Norm Sato reported that the complaint had not been referred to the District Attorney. Chair Mertens stated he would like to pursue referral based on what the Commission learned at the August 9th hearing. Commissioner Smith stated for the record that he was not at the August 9th hearing, but having briefly reviewed the transcript was comfortable referring the complaint to the Santa Clara County District Attorney.

Public Comment:

Behailu Mekbib, Managing Director of Pacific Park Management, apologized, stated that he had learned a lesson and assured the Commission that this violation will not happen again.

Sam Tadess, Pacific Park Management, also apologized, stated he was not knowledgeable of the laws and added that he had hoped to be able to do some work in San Jose.

Motion: Upon motion by Commissioner Badhesha, seconded by Commissioner Smith and unanimously passed, based on the evidence at the August 9th hearing, the Commission referred this matter to the District Attorney. Vote: 3-0-2

Motion: The motion was amended to direct the City Clerk to send the administrative record, including the transcripts, to the Santa Clara County District Attorney. Vote: 3-0-2

B. Response to the Sunshine Reform Task Force Phase I Report and Recommendations

Chair Mertens expressed concern about some of the Task Force's recommendations and the impact on the Commission's current workload. Discussion ensued about barriers to implementation, particularly as they relate to setting hearings on complaints given the Task Force recommendation to post all agenda notices ten days in advance of a meeting.

Motion: Upon motion by Commissioner Smith, seconded by Commissioner Badhesha, and unanimously passed, the Commission directed the City Attorney to submit a letter to the Rules and Open Government Committee noting that the 10-day notice requirement was the Commission's primary concern. Vote: 3-0-2

C. City Council Referrals to the Elections Commission and Development of a work program to address referrals to the Elections Commissions

Documents Filed: 1) Memorandum from City Attorneys Lisa Herrick and Norm Sato dated August 30, 2007 summarizing referrals to the Elections Commission; 2) Memorandum from City Attorney Rick Doyle dated August 12, 2005 regarding campaign contributions and employee work on political campaigns; 3) Memorandum from City Clerk Lee Price dated September 5, 2007 providing an update on City Council referrals to the Elections Commission; and 4) memorandum from Commissioner Tony Ventura dated September 5, 2007 regarding a proposal to revise the San Jose Municipal Code to require that any amount of time spent by an employee at the direction of an employer be considered a "contribution" subject to the City's reporting requirements.

The Commission discussed the update, agreed to defer any discussion on independent expenditures because of pending litigation, referred to a Commission subcommittee (Mertens/Smith) the referral relating to reporting expenditures to the City Clerk within 24 hours; and referred to the City Attorney for an opinion referrals regarding coordination of candidate committees and party organizations; disclaimers for radio and television ads; and prohibiting consultants from working on a candidate or independent expenditure committee.

The Commission discussed penalties and agreed to consider raising the maximum fine from \$5,000 per violation to \$10,000. The Commission asked the City Attorney to do additional research and come back with some information about civil penalties assessed by other cities and the State.

- D. Subcommittee report on possible revisions to the Elections Commission structure

This was continued to the October meeting.

- F. Discussion of protection for “whistle blowers” and/or other persons submitting testimony to the Elections Commission.

Commissioner Smith expressed concern regarding the Commission’s inability to offer guidance when asked about protections afforded by state law for people providing testimony and referred the question to City Attorney. This was continued to a future meeting.

IV MEETING SCHEDULE

The next meeting was scheduled for October 10, 2007 at 6:00 p.m.

V PUBLIC COMMENT

There were none.

VI ADJOURNMENT

The meeting adjourned at 8:47 p.m.

THOMAS M. (TOM) MERTENS, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION